

## REMARKS

Reconsideration of the present application is respectfully requested. Claims 1-11 were originally presented, claims 10 and 11 have been canceled, and claim 5 is currently amended so that claims 1-9 are currently pending. Claim 1 is in independent form.

In the Office Action of October 4, 2007, the Examiner rejected claims 1-9 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,254,766 to Sughrue *et al.* (hereinafter, Sughrue). In support of this rejection, the Examiner refers to the portion of Sughrue at column 1 at lines 5-13, reproduced below:

This invention relates to the removal of sulfur from fluid streams of cracked-gasolines and diesel fuels. In another aspect this invention relates to sorbent compositions suitable for use in the desulfurization of *fluid streams of cracked-gasolines and diesel fuel*. A further aspect of this invention relates to a process for the production of sulfur sorbents for use in the removal of sulfur bodies from fluid streams of cracked gasolines and diesel fuels.<sup>1</sup>

The Examiner seems to interpret Sughrue's disclosure of "fluid streams of cracked gasolines and diesel fuels" as referring to a single fluid stream having both gasoline and diesel components. However, Applicants submit that the Examiner has misinterpreted Sughrue's use of the conjunction "and." As discussed in detail below, Applicants submit that the term "and" can have a variety of different meanings and that Sughrue has intended the term to link alternatives rather than to designate a combination.

According to Webster's dictionary, the conjunction "and" can function to connect words or phrases in over 25 different ways.<sup>2</sup> In addition to indicating combination, "and" can also be used to designate alternatives. For example, the phrase, "suitable desulfurization zones are fixed bed, moving bed, fluidized bed, and transport reactors" clearly indicates that fixed bed, moving bed, fluidized bed, and transport reactors are *alternative* types of desulfurization zones, and *not* that a desulfurization zone must be a *combination* of each type of bed. Similarly, Applicants submit that Sughrue's disclosure of processes suitable for removing sulfur from "fluid streams of cracked gasolines and diesel fuels" refers to a desulfurization process for use on fluid streams of cracked gasoline *or* fluid streams of diesel fuels, rather than a stream comprising both cracked gasoline and diesel.

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<sup>1</sup> Sughrue at col. 1, ll. 5-13, (emphasis added).

<sup>2</sup> Babcock, P. (1993). *Webster's Third New International Dictionary of the English Language*, Unabridged. Merriam-Webster, Inc.: Springfield, Massachusetts, p. 80.

Typically, when “and” is used to describe a two or more elements in combination, the item preceding the words or phrases linked by “and” is a singular noun. For example, independent claim 1 recites a “hydrocarbon stream [that] is a combination of cracked gasoline and diesel fuel.” The use of the singular noun “stream” followed by the recitation of two elements (e.g., cracked gasoline, diesel fuel) connected by “and” indicates that the hydrocarbon stream includes a *combination* of both gasoline *and* diesel fuel.

In contrast, when “and” is used to designate alternatives, the preceding noun is plural. For example, when Sughrue discloses a process for treating “fluid *streams* of cracked gasolines and diesel fuels,” its use of the plural noun “streams” indicates that the subsequent elements connected by “and” (i.e., cracked gasolines, diesel fuels) are *alternatives* rather than a single item including two or more elements in combination.

When “and” is used to designate alternative elements, it can be used interchangeably with the conjunction “or.” In its specification, Sughrue alternates between referring to “fluid streams of cracked-gasolines and diesel fuels”<sup>3</sup> and “fluid streams of cracked-gasolines or diesel fuels.”<sup>4</sup> For example, the preamble of claim 1 of Sughrue recites “[a] sorbent composition suitable for removal of sulfur from cracked gasolines and diesel fuels,” while the body of the claim recites “an amount [of nickel] which effects the removal of organosulfur from a stream of cracked-gasoline or diesel fuel.”<sup>5</sup> Sughrue used “and” and “or” interchangeably when referring to the fluid streams subjected to desulfurization, thus implying that the two conjunctions perform the same function of introducing alternative types of fluid streams (i.e., cracked-gasoline or diesel) rather than describing a single stream including both elements.

Further, Applicants submit that if Sughrue had intended to disclose a fluid stream including a combination of cracked gasoline and diesel, Sughrue would have specifically addressed the combined desulfurized product and/or provided at least one example including the desulfurization of a combined stream. In contrast, Sughrue addresses subsequent uses of the desulfurized gasoline and desulfurized diesel fuel streams separately<sup>6</sup> and provides two different examples describing its desulfurization process applied to a stream of cracked gasoline (i.e.,

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<sup>3</sup> See, for example, Sughrue at col. 1, ll. 5-13; col. 2, ll. 25-39; and col. 13, ll. 36 and 37, emphasis added.

<sup>4</sup> See, for example, Sughrue at col. ll. 55-58 and 65; col. 3, ll. 13-15 and 19-22; col. 4, ll. 13-16; col. 6, ll. 65-67; col. 7, ll. 1-6, 20-23, 33, and 34; col. 8, ll. 19-25 and 42-45; col. 13, ll. 50-52, emphasis added.

<sup>5</sup> Sughrue at col. 13, ll. 35, 36, and 50-52 (emphasis added).

<sup>6</sup> *Id.* at col. 9, ll. 45-51 (emphasis added).

Example II) and a stream of diesel (i.e., Example III).<sup>7</sup> Thus, Applicants submit Sughrue intended to alternatively refer to streams of cracked gasoline or diesel fuel.

In light of the foregoing, Applicants submit that Sughrue fails to disclose a hydrocarbon stream comprising a combination of cracked gasoline and diesel, as recited in independent claim 1. Thus, Sughrue fails to disclose each of the limitations of independent claim 1 and, consequently, Sughrue fails to anticipate the claim. Dependent claims 2-9 recite additional patentable features and should also be allowable as being dependent on an allowable base claim. Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejection of claims 1-9 under 35 U.S.C. §102(e).

In the Office Action, the Examiner alternatively rejects claims 1-9 under 35 U.S.C. §103(a) as being obvious over Sughrue. The present application is a continuation-in-part of U.S. Patent No. 6,683,024 to Khare *et al.* (hereinafter, Khare '024), which was filed on March 15, 2000 and issued on January 27, 2004. Claims 1-9 of the present Application are fully supported by the disclosure of Khare '024. Support for claims 1-9 can be found, for example, in the specification of Khare '024 at page 4, lines 11-14; page 6, lines 15-20; page 9, lines 6-18; page 11, lines 5-9; page 13, lines 3-17; page 16, lines 4-20; page 17, lines 1-11; page 31, lines 1-4; page 35, line 16 – page 36, line 3; page 36, lines 9-20; page 39, line 11 - page 40, line 16; page 41, lines 7-12; page 45, line 18 – page 46, line 2; page 47, lines 3-20; page 48, lines 1-15; and page 68, lines 1-16. Therefore, claims 1-9 are entitled to the March 15, 2000 priority date of Khare '024.

Sughrue was filed on August 25, 1999, which is less than seven months prior to the March 15, 2000 effective priority date of claims 1-9 of the present application. According to 35 U.S.C. §103(c):

Subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Sughrue qualifies as prior art to the instant invention only under 35 U.S.C. §102(e). Applicants have included herewith a Declaration pursuant to 37 C.F.R. §1.132 from Lynda S. Jolly, an attorney of record in the present application, establishing that the subject matter of Sughrue and

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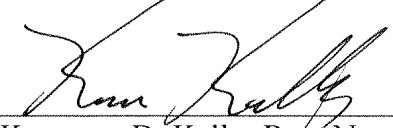
<sup>7</sup> See Sughrue, col. 10, l. 35 – col. 12, l. 24 (Example II) and col. 12, ll. 25-55 (Example III).

the instantly claimed invention were, at the time the invention was made, owned by or subject to obligation of assignment to the same entity. Therefore, under 35 U.S.C. §103(c), Sughrue cannot be used in an obviousness rejection under 35 U.S.C. §103(a) for the present application. Accordingly, Applicants submit the Examiner's rejection of claims 1-9 under 35 U.S.C. §103(a) is now moot.

In light of the foregoing, the application should be in condition for allowance and such allowance is respectfully requested. Should the Examiner have any questions, please contact the undersigned at (800) 445-3460. The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 19-0522.

Respectfully submitted,  
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